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AETNA LIFE INSURANCE COMPANY, THE
PARSONS BRINCKERHOFF GROUP
ADMINISTRATION, INC. SHORT TERM
DISABILITY PLAN AND THE PARSONS
BRINCKERHOFF GROUP
ADMINISTRATION, INC. LONG TERM
DISABILITY PLAN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH FOWLER,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY;
THE PARSONS BRINCKERHOFF GROUP
ADMINISTRATION, INC. SHORT TERM
DISABILITY PLAN; THE PARSONS
BRINCKERHOFF GROUP
ADMINISTRATION, INC. LONG TERM
DISABILITY PLAN; and DOES 1 through 20,
INCLUSIVE,

Defendants.

CASE NO. 3:08-cv-03463 (MEJ)

**OBJECTIONS TO PLAINTIFF'S
OPPOSITION AND REQUEST FOR
JUDICIAL NOTICE TO DEFENDANTS'
MOTION TO DISMISS [FED. R. CIV. P.
12(b)(6)] AND MOTION TO STRIKE
[FED. R. CIV. P. 12(F)]**

DATE: September 18, 2008
TIME: 10 a.m.
DEPT.: Courtroom B
JUDGE: Hon. Maria-Elena James

ORAL ARGUMENT REQUESTED

TO THIS COURT, THE PARTIES AND ATTORNEYS OF RECORD:

Defendants Aetna Life Insurance Company, The Parsons Brinckerhoff Group
Administration, Inc. Short Term Disability Plan And The Parsons Brinckerhoff Group
Administration, Inc. Long Term Disability Plan (collectively, "Defendants") object to Plaintiff
Elizabeth Fowler's ("Plaintiff") Request for Judicial Notice filed in support of her Opposition to
Defendants' Motion to Dismiss and Motion to Strike portions of the First Amended Complaint.

1 **I. OBJECTIONS**

2 Pursuant to Federal Rule of Evidence 201, Defendants object and move to strike Exhibit
3 B, which is the Brief for the United States Amicus Curiae Supporting Petitioners ("Amicus
4 Brief"), filed on December 18, 2003 in the case *Aetna Health, Inc. v. Davila*, 524 U.S. 200
5 (2004), and Exhibit C, which is an Order from *Edwards v. The Prudential Life Ins. Co. of Amer.*,
6 C 07-05807 (N.D. Cal. January 7, 2008) (the "Edwards Order").

7 Judicial notice of the Amicus Brief and the Edwards Order is improper. Federal Rule of
8 Evidence 201(b) requires that:

9 "A judicially noticed fact must be one not subject to reasonable dispute in that it
10 is either (1) generally known within the territorial jurisdiction of the trial court or
11 (2) capable of accurate and ready determination by resort to sources whose
accuracy cannot reasonably be questioned."

12 For a fact to be judicially noticed under Rule 201(b), indisputability is a prerequisite.
13 *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). Consequently, "[w]hile the
14 authenticity and existence of a particular order, motion, pleading or judicial proceeding, which is
15 a matter of public record, is judicially noticeable, veracity and validity of its contents (the
16 underlying arguments made by the parties, disputed facts, and conclusions of applicable facts or
17 law) are not." *United States v. Southern California Edison Co.*, 300 F.Supp.2d 964, 974
18 (E.D.Cal. 2004); see also *Wyatt v. Terhune*, 315 F.3d 1108, 1114 fn.5 (9th Cir. 2003) ("[C]ourts
19 should distinguish between taking judicial notice of the truth of some extrajudicial fact recited in
20 a court record and the use of those facts for some purpose that does not depend on the truth of the
21 facts recited [Citations omitted].")

22 **A. The Amicus Brief Does Not Contain Judicially Noticed Facts**

23 Even if this Court were to take judicial notice of the Amicus Brief, which Defendants
24 contend is improper, the only judicially noticed fact would be the actual filing of the Amicus
25 Brief. The Amicus Brief content is not judicially noticeable. *M/V Am. Queen v. San Diego*
26 *Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983) (stating general rule that "a court
27 may not take judicial notice of proceedings or records in another cause so as to supply, without
28

1 formal introduction of evidence, facts essential to support a contention in a cause then before
2 it"). The Amicus Brief does not contain facts judicially noticeable as a matter of law. (*Id.*)

3 The Amicus Brief was filed in a different case. The Amicus Brief and its filing have no
4 relation to the issues for resolution in Defendants' Motion to Dismiss and Motion to Strike. The
5 Amicus Brief contains disputed facts and legal argument irrelevant and not the proper subject of
6 judicial notice.

7 **B. The Edwards Order Concerns Different and Disputed Facts, Which Are**
8 **Not the Proper Subject of Judicial Notice**

9 This Court may only take notice of another court's order for the limited purpose of
10 recognizing the "judicial act" that the order represents or the subject matter of the litigation. *Lee*
11 *v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (a court may take judicial notice of
12 another court's opinion, but not of the truth of the facts recited therein); *Asdar Group v.*
13 *Pillsbury, Madison & Sutro*, 99 F.3d 289, 290, fn. 1 (9th Cir. 1996) (court may take judicial
14 notice of the pleadings and court orders in earlier related proceedings).

15 Other circuit courts are in accord. See, e.g., *United States v. Jones*, 29 F.3d 1549, 1553
16 (11th Cir. 1994) ("[A] court may take notice of another court's order only for the limited purpose
17 of recognizing the "judicial act" that the order represents or the subject matter of the litigation");
18 *U.S. v. Garland*, 991 F.2d 328, 332 (6th Cir. 1993) ("Court could take judicial notice of foreign
19 criminal judgment and its existence as official statement admissible as evidence of facts stated;
20 court would not, however, judicially notice truth of statements contained in judgment to extent
21 such facts remained in dispute"); *Colonial Leasing Co. v. Logistics Control Group Int'l*, 762
22 F.2d 454, 459 (5th Cir. 1985) ("Care should be taken by court to identify fact it is noticing, and
23 its justification for doing so, particularly when document, such as court judgment, from which
24 any number of distinct facts might be drawn, is object of the notice.")

25 The Edwards Order is not subject to judicial notice. The factual background and legal
26 argument behind the Edwards Order are in dispute. Although the subject matter of the litigation
27 may be similar – recovery of disability benefits under ERISA – that is it. The facts, law, parties'

positions and arguments and the Edwards' Court's analysis thereof is not subject to judicial notice.

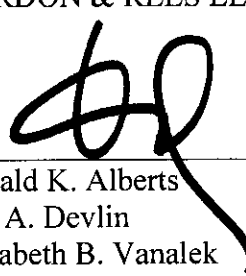
II. CONCLUSION

For the following reasons, Defendants request this Court grant their Objection, strike the Amicus Brief and Edwards Order, and not consider either in ruling on Defendants' Motion to Dismiss and Motion to Strike.

DATED: September 4, 2008

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By



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